

1-1 By: Estes S.B. No. 1217
1-2 (In the Senate - Filed March 7, 2011; March 16, 2011, read
1-3 first time and referred to Committee on Business and Commerce;
1-4 April 7, 2011, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 9, Nays 0; April 7, 2011,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1217 By: Estes

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to an excavator's duty to notify a notification center
1-11 before excavating; providing civil and criminal penalties.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Section 251.155, Utilities Code, is amended to
1-14 read as follows:

1-15 Sec. 251.155. EXCEPTION IN CASE OF EMERGENCY; OFFENSE.

1-16 (a) Section 251.151 does not apply to an emergency excavation that
1-17 is necessary to respond to a situation that endangers life, health,
1-18 or property or a situation in which the public need for
1-19 uninterrupted service and immediate reestablishment of service if
1-20 service is interrupted compels immediate action.

1-21 (b) The excavator may begin emergency excavation under
1-22 Subsection (a) immediately and shall take reasonable precautions to
1-23 protect underground facilities.

1-24 (c) When an emergency exists, the excavator shall:

1-25 (1) notify a notification center as promptly as
1-26 ~~reasonably~~ possible; and

1-27 (2) immediately cease all excavation efforts if
1-28 advised by the notification center or other governing authority to
1-29 cease all excavation efforts.

1-30 (d) An excavator may not misrepresent a fact or circumstance
1-31 used in the determination of an emergency excavation under
1-32 Subsection (a). A person that violates this subsection is subject
1-33 to a penalty under:

1-34 (1) Section 251.201;

1-35 (2) Section 251.203; or

1-36 (3) both Section 251.201 and Section 251.203.

1-37 SECTION 2. Section 251.201, Utilities Code, is amended by
1-38 adding Subsections (a-1), (b-1), and (c-1) and amending Subsections
1-39 (b) and (c) to read as follows:

1-40 (a-1) An excavator that violates Section 251.155(d) is
1-41 liable for a civil penalty of not less than \$1,000 or more than
1-42 \$2,000. If a county attorney or district attorney decides not to
1-43 bring an action to recover the civil penalty, the board of directors
1-44 of the corporation may, in accordance with Section 251.2011, give
1-45 the excavator a warning letter and require the excavator to attend a
1-46 safety training course approved by the board. The county attorney
1-47 or district attorney shall notify the board of its decision.

1-48 (b) Except as provided by Subsection (b-1), if ~~it~~ it is
1-49 found at the trial on a civil penalty that the excavator has
1-50 violated this chapter and has been assessed a penalty under this
1-51 section or has received a warning letter from the board one other
1-52 time before the first anniversary of the date of the most recent
1-53 violation, the excavator is liable for a civil penalty of not less
1-54 than \$1,000 or more than \$2,000.

1-55 (b-1) If it is found at the trial on a civil penalty that the
1-56 excavator has violated Section 251.155(d) and has been assessed a
1-57 penalty under this section or has received a warning letter from the
1-58 board one other time before the first anniversary of the date of the
1-59 most recent violation, the excavator is liable for a civil penalty
1-60 of not less than \$2,000 or more than \$5,000.

1-61 (c) Except as provided by Subsection (c-1), if ~~it~~ it is
1-62 found at the trial on a civil penalty that the excavator has
1-63 violated this chapter and has been assessed a penalty under this

2-1 section at least two other times before the first anniversary of the
2-2 date of the most recent violation, or has been assessed a penalty at
2-3 least one other time before the first anniversary of the date of the
2-4 most recent violation and has received a warning letter from the
2-5 board during that period, the excavator is liable for a civil
2-6 penalty of not less than \$2,000 or more than \$5,000.

2-7 (c-1) If it is found at the trial on a civil penalty that the
2-8 excavator has violated Section 251.155(d) and has been assessed a
2-9 penalty under this section at least two other times before the first
2-10 anniversary of the date of the most recent violation, or has been
2-11 assessed a penalty at least one other time before the first
2-12 anniversary of the date of the most recent violation and has
2-13 received a warning letter from the board during that period, the
2-14 excavator is liable for a civil penalty of not less than \$5,000 or
2-15 more than \$10,000.

2-16 SECTION 3. The heading to Section 251.203, Utilities Code,
2-17 is amended to read as follows:

2-18 Sec. 251.203. CRIMINAL PENALTY [~~FOR REMOVAL, DAMAGE, OR~~
2-19 ~~CONCEALMENT OF MARKER OR SIGN~~].

2-20 SECTION 4. Section 251.203, Utilities Code, is amended by
2-21 adding Subsection (a-1) to read as follows:

2-22 (a-1) A person commits an offense if the person
2-23 intentionally or recklessly violates Section 251.155(d).

2-24 SECTION 5. The changes in law made by this Act apply only to
2-25 conduct occurring on or after the effective date of this Act.
2-26 Conduct occurring before the effective date of this Act is governed
2-27 by the law in effect on the date the conduct occurred, and the
2-28 former law is continued in effect for that purpose.

2-29 SECTION 6. This Act takes effect September 1, 2011.

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